

RECORDATION NO. 28064 ^B FILED

OCT 23 '09 -2 00 PM

SURFACE TRANSPORTATION BOARD

ALVORD AND ALVORD
ATTORNEYS AT LAW
1050 SEVENTEENTH STREET, NW
SUITE 301
WASHINGTON, DC
20036
—
(202) 393-2266
FAX (202) 393-2156
E-MAIL alvordlaw@aol.com

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

OF COUNSEL
URBAN A. LESTER

October 23, 2009

Anne K. Quinlan, Esquire
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Dear Ms. Quinlan:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Assignment and Assumption Agreement, dated as of October 22, 2009, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Security Agreement being filed with the Board under Recordation Number 28064.

The names and addresses of the parties to the enclosed document are:

Assignor: Infinity Rail, LLC
1355 Peachtree Street
Suite 750 - South Tower
Atlanta, GA 3030

Assignee: Elmore Financial, LLC
696 N. 8th Street
Brawley, CA 92227

Anne K. Quinlan, Esquire
October 23, 2009
Page 2

A description of the railroad equipment covered by the enclosed document is:

62 wood chip hopper railcars within the series IFRX 7116 - IFRX 7143 and IFRX 592041 - IFRX 592965 as more particularly set forth in the attachment to the document.

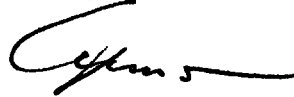
A short summary of the document to appear in the index is:

Assignment and Assumption Agreement.

Also enclosed is a check in the amount of \$41.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Alvord', with a long horizontal flourish extending to the right.

Robert W. Alvord

RWA/sem
Enclosures

OCT 23 '09 -2 00 PM

ASSIGNMENT AND ASSUMPTION AGREEMENT

SURFACE TRANSPORTATION BOARD

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of October 22, 2009 (this "Agreement"), is between Infinity Rail, LLC a Georgia limited liability company ("Seller"), and Elmore Financial, LLC, a California limited liability company ("Buyer").

RECITALS

WHEREAS, Buyer and Seller have entered into that certain Purchase Agreement, dated as of October 22, 2009 (the "Purchase Agreement"), providing for the purchase of the Ownership Interest by Buyer from Seller, subject to the terms and conditions set forth therein; and

WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by Seller and Buyer.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows.

AGREEMENT

1. **Definitions.** Capitalized terms used herein without definition shall have the meanings assigned to them in Section 4 of this Agreement.

2. **Assignment.** Effective as to each unit of Equipment on the Closing Date, Seller sells to Buyer all of Seller's rights, title and interest in and to such unit and assigns to Buyer all of Seller's rights and obligations, to the extent arising on or after the Closing Date, under the Lease and any other Operative Agreements as they relate to each unit. Notwithstanding the foregoing, Seller shall continue to be entitled to the benefit of any right to indemnification for tax or other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the Closing Date, as specified in the Purchase Agreement.

3. **Acceptance of Assignment; Assumption of Obligations; Effect of Assignment.** Buyer accepts the assignment contained in Section 2 hereof and, in respect of the period on and after the Closing Date, assumes all obligations of Seller accruing on or after the Closing Date under, and agrees to be bound to the same extent as Seller by all the terms of, the Operative Agreements. Effective on and after the Closing Date (except with respect to obligations not assumed pursuant to the preceding sentence), Buyer shall be deemed to stand in the place of Seller for all purposes under the Operative Agreements and each reference in the Operative Agreements to Seller shall be deemed to mean Buyer. Seller is released of all obligations accruing under the Operative Agreements on or after the Closing Date.

4. **Definitions.** Except as otherwise specified or as the context may otherwise require, the following terms have the meanings set forth below whenever used in this Agreement (terms defined in the singular to have a correlative meaning when used in the plural and vice versa).

Bill of Sale: the bill of sale in the form of Exhibit I hereto.

Closing Date: the date of the Bill of Sale.

Equipment: (i) the railcars described in Schedule 1 to this Agreement together with (ii) every part, accessory, component and any equipment installed therein or attached thereto, except for any that have been installed or attached by the Lessee or other user of the Equipment and have not become

property of the lessor pursuant to the Lease as of the Closing Date. Individually each railcar is referred to as a "unit" or "unit of Equipment."

Lease: the lease described in Schedule 2 to this Agreement.

Lessee: the lessee under the Lease, identified in Schedule 2 to this Agreement.

Operative Agreements: together, the Lease and the other agreements described in Schedule 2 to this Agreement (but in the case of any master lease agreement described in that Schedule 2, solely as it pertains to the Lease).

Ownership Interest: Seller's rights, title and interest in and to the Equipment and Seller's rights and obligations under the Operative Agreements.

5. **Amendments.** No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

6. **Notices.** All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 9.5 of the Purchase Agreement.

7. **Headings.** The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

8. **Counterparts.** This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

9. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of Georgia, without giving effect to its conflict of law rules.

10. **Entire Agreement.** This Agreement, the Purchase Agreement, and the Bill of Sale (together with their exhibits and schedules) represent the entire agreement of the parties with respect to the subject matter hereof and thereof and supersede and cancel any prior oral or written agreement, letter of intent or understanding with respect to such subject matter.

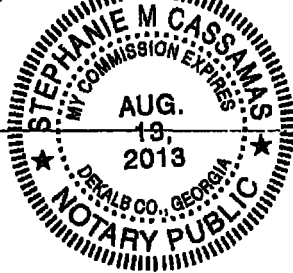
11. **Recordation.** Buyer will record this Agreement with the Surface Transportation Board.

[Execution on next page]

[signature page for Assignment and Assumption Agreement]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto on the date first above written.

| | |
|---|---|
| INFINITY RAIL, LLC By Infinity Asset Management, LLC as Manager By: <u><i>Jeffrey E. Edelman</i></u> Jeffrey E. Edelman, President | ELMORE FINANCIAL, LLC By: <u><i>Howard Elmore</i></u> Howard Elmore, Manager |
| State of Georgia; County of Fulton On <u>October 15</u> , 2009, before me personally appeared Jeffrey E. Edelman, to me personally known, who being by me duly sworn said that he is President of Infinity Asset Management, LLC, Manager of Infinity Rail, LLC, and that, as such officer, being duly authorized to do so, he executed the foregoing instrument on behalf of said limited liability company. <u><i>Stephanie M. Cassamas</i></u> Notary Public My commission expires. [NOTARIAL SEAL] | State of California, County of _____ On _____, 2009, before me personally appeared Howard Elmore, to me personally known, who being by me duly sworn said that he is the Manager of Elmore Financial, LLC, and that, as such officer, being duly authorized to do so, he executed the foregoing instrument on behalf of said limited liability company. (See Attached Certificate) _____ Notary Public My commission expires: [NOTARIAL SEAL] |



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Imperial

On 10/7/2009

Date

before me, * Linda Godsey, Notary Public *

Here Insert Name and Title of the Officer

personally appeared

**** Howard Elmore ****

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

Title or Type of Document: Assignment & Assumption Agreement

Document Date: No Date

Number of Pages 8 (Includes Exhibits & Schedules)

Signer(s) Other Than Named Above. Jeffrey E. Edelman, President-Infinity Rail, LLC

Capacity(ies) Claimed by Signer(s)

Signer's Name. Howard Elmore

- ☐ Individual
☐ Corporate Officer — Title(s). _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney In Fact
☐ Trustee
☐ Guardian or Conservator
☒ Other Manager

Signer Is Representing: Elmore Financial, LLC

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name. _____

- ☐ Individual
☐ Corporate Officer — Title(s). _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney In Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing _____

EXHIBIT I
to Assignment and Assumption Agreement

FORM OF BILL OF SALE

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Infinity Rail, LLC, a Georgia limited liability company ("Seller"), does hereby sell, transfer and assign to Elmore Financial, LLC, a California limited liability company ("Buyer"), all of Seller's rights, title and interest in and to the equipment described in Schedule 1 hereto, subject to the terms and conditions of the Purchase Agreement, dated as of October __, 2009, between Seller and Buyer, and the Assignment and Assumption Agreement, dated October __, 2009, between Seller and Buyer.

INFINITY RAIL, LLC

By Infinity Asset Management, LLC as Manager

By: _____
Jeffrey E. Edelman, President

Dated: October __, 2009

Schedule 1
(to Purchase Agreement, Assignment and Assumption Agreement, and Bill of Sale)

Description of railcars:

Sixty two (62) used wood chip hopper railcars, 7000 cubic foot, bearing the following reporting marks and road numbers:

| Unit Count | Car Mark | Car Num | | Unit Count | Car Mark | Car Num |
|------------|----------|---------|--|------------|----------|---------|
| 1 | IFRX | 7116 | | 32 | IFRX | 592454 |
| 2 | IFRX | 7117 | | 33 | IFRX | 592495 |
| 3 | IFRX | 7118 | | 34 | IFRX | 592522 |
| 4 | IFRX | 7123 | | 35 | IFRX | 592542 |
| 5 | IFRX | 7124 | | 36 | IFRX | 592550 |
| 6 | IFRX | 7128 | | 37 | IFRX | 592564 |
| 7 | IFRX | 7129 | | 38 | IFRX | 592573 |
| 8 | IFRX | 7132 | | 39 | IFRX | 592591 |
| 9 | IFRX | 7133 | | 40 | IFRX | 592597 |
| 10 | IFRX | 7134 | | 41 | IFRX | 592607 |
| 11 | IFRX | 7136 | | 42 | IFRX | 592616 |
| 12 | IFRX | 7140 | | 43 | IFRX | 592621 |
| 13 | IFRX | 7141 | | 44 | IFRX | 592641 |
| 14 | IFRX | 7142 | | 45 | IFRX | 592647 |
| 15 | IFRX | 7143 | | 46 | IFRX | 592682 |
| 16 | IFRX | 592041 | | 47 | IFRX | 592692 |
| 17 | IFRX | 592053 | | 48 | IFRX | 592715 |
| 18 | IFRX | 592059 | | 49 | IFRX | 592729 |
| 19 | IFRX | 592145 | | 50 | IFRX | 592749 |
| 20 | IFRX | 592193 | | 51 | IFRX | 592751 |
| 21 | IFRX | 592235 | | 52 | IFRX | 592763 |
| 22 | IFRX | 592243 | | 53 | IFRX | 592764 |
| 23 | IFRX | 592251 | | 54 | IFRX | 592820 |
| 24 | IFRX | 592254 | | 55 | IFRX | 592867 |
| 25 | IFRX | 592261 | | 56 | IFRX | 592884 |
| 26 | IFRX | 592272 | | 57 | IFRX | 592903 |
| 27 | IFRX | 592275 | | 58 | IFRX | 592914 |
| 28 | IFRX | 592317 | | 59 | IFRX | 592923 |
| 29 | IFRX | 592346 | | 60 | IFRX | 592944 |
| 30 | IFRX | 592354 | | 61 | IFRX | 592953 |
| 31 | IFRX | 592436 | | 62 | IFRX | 592965 |

Schedule 2
(to Assignment and Assumption Agreement)

Operative Agreements; Lessee

Lessee: International Paper Company

Lease: the lease between Infinity Rail, LLC ("IR"), as lessor, and International Paper Company ("IPC"), as lessee, pursuant to the following documents:

- (i) "Amendment to Lease" dated March 27, 2009, between IR as lessor and IPC as lessee;
- (ii) Schedule No. 1 dated January 17, 2008 between IR, as lessor, and IPC, as lessee, which incorporates the provisions of the Master Lease Agreement dated January 17, 2008 between IR and IPC.

Other Operative Agreements: none.

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: _____

10/23/09



Robert W. Alvord